IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.8092 OF 2004

1. Shri Jyotiram Shiva Patil & ors. .. Petitioners.

Vs

1. Smt. Dwarkabai Yeshwant Mardane

and ors. .. Respondents

Mr S.S.Patwardhan, for the petitioners.

Mr A.B.Vagyani, for respondent nos 1 to 3 and 5.

CORAM : D.B.BHOSALE,J.

DATE : 11th October, 2004.

PC:

1. Heard the learned counsel for the parties.

2. Rule. Returnable forthwith. Mr Vagyani, learned counsel, waives service for the respondents. By consent, rule is heard finally.

3. The petitioners have impugned the order dated 22.7.2004 passed by the learned Jt.Civil Judge, Sr.Dn, Kolhapur, below Exhibit-14 in Spl.Civil Suit No.294 of 2002, by which the petitioners' prayer seeking amendment of the plaint has been rejected. The petitioners-plaintiffs filed Spl.Civil Suit No.294 of 2002 for specific performance of an oral agreement dated

29.11.2001. According to the petitioners, while filing the suit through inadvertence they wrongly mentioned a date of oral agreement as "October, 2001" instead of "29th November, 2001". The petitioners, therefore, sought to amend the date of agreement wherever it appears in the Plaint, without making any other change in the averments. By way of an amendment, they also sought to introduce a letter dated 28.11.2001 allegedly written by respondent no.3 admitting the oral agreement. The application was rejected by the learned Judge holding that the plaintiffs are not sure about the date of execution of the oral agreement and if the amendment is allowed, it is likely to cause prejudice to other side. It is also observed that the letter dated 28.11.2001 has not been produced on record.

4. I perused the impugned order and other material placed before me. The learned Judge has committed an error in entering into the merits of the amendment sought by the petitioners. As a matter of fact, the nature of amendment is such and the stage at which the application seeking the amendment was filed by the petitioners, in my opinion, would not cause any prejudice whatsoever to the defendants since it is open for them to file additional written statement making their stand clear in so far as the amendment is

concerned. The law is well settled that all amendments of the pleadings should be allowed which are necessary for determination of the real controversy in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or the defence taken. In my opinion, the amendment sought would be necessary for determination of the real controversy involved in the suit. It would not cause any prejudice to other side or it would not result in defeating legal rights accrued to the defendants. Power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the Court, while deciding such prayers, should not adopt a hypertechnical approach. Liberal approach should be the general rule.

5. In the result, the writ petition is allowed. The impugned order is quashed and set aside. The application for amendment is allowed. The petitioners-plaintiffs to carry out amendment within four weeks from today. It is open for the respondents-defendants to file additional written statement if they so desire.

6. Rule made absolute. No costs.

(D.B.BHOSALE, J.)